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# GUIDELINES TO VENDOR REGISTRATION

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State of North Dakota

These guidelines are a result of the cooperative efforts of the North Dakota  
Secretary of State, Office of the Attorney General, and Office of Management &  
Budget

November 2013

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## GUIDELINES TO VENDOR REGISTRATION

*These guidelines are intended to provide State Procurement Officers with information about the various types of registration requirements for vendors that provide commodities and services to the State. These guidelines are based upon State laws and rules, and Office of Management and Budget (OMB) procurement guidelines. This document is a reference tool for drafting clauses related to vendor registration that are required in solicitation documents and contracts. Please contact the OMB State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) if you have any suggestions for improving these guidelines.*

### **I. Secretary of State Registration Requirements**

North Dakota has laws that require vendors to become registered with the North Dakota Secretary of State in certain circumstances. Registration with the Secretary of State is not tied to any specific dollar amount. So, you need to determine whether the contractor will be required to register with the North Dakota Secretary of State when planning to procure commodities or services, regardless of the dollar amount.

Contact the Secretary of State, Business Division, at 701-328-4284, for assistance in determining whether the scope of the contract will require the contractor to be registered with the Secretary of State. The [Secretary of State website](http://www.nd.gov/sos/) (<http://www.nd.gov/sos/>) contains information about vendor registration requirements. Agencies can use the "Business Record Search" to determine if vendors are registered with the Secretary of State.

### **Exceptions to Secretary of State Registration Requirements**

1. All North Dakota vendors must be registered with the Secretary of State, except under the following circumstances:
  - a. The North Dakota vendor is a sole proprietor doing business in his or her full name or variation thereof, such as, "Joe Smith Painting." (Joe Smith may be required to have a contractor's license.)
  - b. The North Dakota vendor is a sole proprietor doing business using his surname as part of the business name and a specialized license or permit is not required, such as "Smith Consulting". If a license or permit is required as it would be if the vendor were "Smith Construction", then the vendor would have to register his trade name with the Secretary of State.
  - c. The North Dakota vendor is a general partnership and the full names of all partners are disclosed in the partnership name, such as, "Joe Smith and Tom Dooley Construction." (The partnership may be required to have a contractor's license.)

2. All foreign (out-of-state) vendors that transact business in North Dakota must be registered with the Secretary of State, except under the following circumstances:
  - a. The scope of work is limited to the foreign vendor shipping goods into North Dakota by common carrier.
  - b. The foreign vendor is a sole proprietor doing business in his or her own name or variation thereof, such as, “Joe Smith Painting.” (Joe Smith may be required to have a contractor’s license.)
  - c. The foreign vendor is a general partnership and the full names of all partners are disclosed in the partnership name, such as, “Joe Smith and Tom Dooley Construction.” (The partnership may be required to have a contractor’s license.)
  - d. The scope of work does not require the foreign vendor to physically come to North Dakota, and no licenses or permits are required by North Dakota law or other ordinance. For example, a consultant providing editing services reviews documents and submits an edited copy via mail or e-mail. Registration with the Secretary of State is required if the vendor must obtain a license or permit from a state regulatory board or agency. Visit the [NDSU Extension Service website \(http://www.ag.ndsu.edu/ccv/publications/business-reports-forms-and-licenses-required-in-the-state-of-north-dakota\)](http://www.ag.ndsu.edu/ccv/publications/business-reports-forms-and-licenses-required-in-the-state-of-north-dakota) Click on “Publications” Contact your Assistant Attorney General for questions regarding required licenses or permits.
  - e. The scope of work requires a foreign (out-of-state) vendor to physically come to North Dakota, but the work will be completed within 30 days or less, the project is an isolated transaction for the vendor, and no licenses or permits are required by North Dakota law or other ordinance (e.g. an out-of-state vendor has never been in the State before and provides a one-day seminar in North Dakota.)

### Registered Agent

All foreign (out-of-state) vendors must also have a “Registered Agent” when registering with the Secretary of State. A registered agent is a person authorized to accept service of process for another person or entity in a particular jurisdiction. Service of process is the formal delivery of some type of legal notice. A registered agent ensures each service of process is properly received and forwarded to the business organization. No lawsuit can begin until the party being sued receives service of process.

All jurisdictions have statutory provisions relating to registered agents. North Dakota law requires that business organizations register prior to conducting business in the state; the registration process includes designating and maintaining a registered agent. Failing to maintain a registered agent may result in the entity losing its “good standing” status.

A small number of business organizations do not meet the legal definition of a corporation, a limited liability company, a limited liability partnership, or a limited partnership and are not required by law to register with the Secretary of State. Since there is no registration with the Secretary of State, there is no registered agent appointed by these business entities.

N.D.C.C. § 54-44.4-09(1) requires every business organization that desires to submit a bid or proposal to the State be an approved vendor. As part of the process to become an approved vendor, the business organization must appoint the Secretary of State as its agent for service of process; however, N.D.C.C. § 54-44.4-09(4) provides the procurement office with the authority to waive this requirement, if it is in the best interests of the State.

If the business organization is not an approved vendor, there may be no registered agent for that business organization. Although the law provides for these exceptions, it is not the recommended best practice for the State to do business. It is strongly recommended that state agencies encourage potential vendors to register with the Secretary of State and be included on the approved vendor list prior to submitting a bid or proposal.

If a vendor refuses to register with the Secretary of State, agencies need to consider whether that vendor has sufficient stability and credibility to do business with the State. The process of registration is a small fee and is not time consuming or difficult. If the vendor is credible and reputable, the vendor should not have reservations about the registration requirements.

In the event that a state agency decides to do business with a vendor that has not registered with the Secretary of State and therefore, does not have a registered agent, it must be aware of the potential risk and losses to which it is exposing the state. When a vendor does not have a registered agent, there is no official representative for accepting service of process on behalf of the business. This means that the remedies available to the State to enforce the contract become extremely limited, if not eliminated altogether. The end result could be greatly increased costs and time to the State in its attempt to recover its losses; or the State may not have any remedies available and will be forced to absorb the entire loss that results from the contract. The outcome remains predictable – the State is forced to utilize recourses and funds that it would have been able to avoid by doing business with a vendor that is registered with the Secretary of State and is included on the procurement office's approved vendor list.

## **II. Approved Vendor (State Bidders List) Registration**

State law requires the Office of Management and Budget to maintain a State Bidders List that state agencies and institutions are required to use when purchasing commodities and services over the threshold for small purchases (ref. N.D.C.C. § [54-44.4-09](#)). Individuals or business entities desiring to be placed on the State Bidders List must become “approved” through an application process.

- The individual or business entity must file a [Bidders List Application SFN53655](#) with the OMB State Procurement Office indicating the commodities or services for which they would like to receive solicitations.
- The applicant must be registered with the North Dakota Secretary of State, even though it might otherwise not be required to register, and must appoint the North Dakota Secretary of State as its “true and lawful agent for service of process in this state.” [Ref. N.D.C.C. § [54-44.4-09\(3\)](#)]

For more detailed information about the procedures for getting vendors on the State Bidders List contact the Vendor Registry Help Desk at 701-328-2683 or [spovendor@nd.gov](mailto:spovendor@nd.gov). Applications forms and the State Bidders List are available on the OMB State Procurement Office website (<http://www.nd.gov/spo/vendor/registry/>).

State agencies are not required to use the State Bidders List when making small purchases (up to \$25,000); however, there are advantages in doing so. All vendors on the State Bidders List are registered with the Secretary of State.

State agencies are required to use the State Bidders List when making purchases over \$25,000, unless the agency receives approval to make a noncompetitive or limit competition purchase using the [Alternate Procurement Request](#) form, SFN 51403.

State law allows the purchasing agency to select when the bidders must become approved. The OMB State Procurement Office website has [solicitation templates](#) that include standard clauses for each of these approved vendor options. The procurement officer must select the appropriate standard clause in the solicitation. The solicitation may:

- Require all bidders or offerors to be approved vendors by the deadline for receipt of bids or proposals;
- Authorize receipt of bids or proposals from vendors that are not approved, and require the successful bidder or offeror to become registered within 60 days, or shorter period specified by the procurement officer; or
- Waive the approval requirement, if they determine in accordance with these guidelines that: 1) registration with the Secretary of State and 2) an agent for service of process in this State is not required.

Agencies must understand the potential risk associated with waiving the registered agent requirement.

### **III. Vendor Registry**

The State operates a PeopleSoft/Oracle Enterprise Resources Planning (ERP) system that includes a database of vendors used by state agencies. A 'payee or potential payee' is any person or entity that receives any type of payment from a state agency or any person or entity to which a state agency wishes to issue a purchase order. The ERP vendor database contains several types of payee categories, including state employees, accounts payable payees, medical providers, counties, cities, and the vendors on the bidders list.

The OMB State Procurement Office has a Vendor Registry Help Desk that maintains the database.

A vendor must be set up as a 'payee' before an agency can issue a purchase order or payment to that vendor. The agency must submit a vendor set up request using the Vendor Registry Work Request System. OMP Fiscal Policy 110 requires all payees to complete an IRS Form W-9. For more information visit the Vendor Registry website at:

<http://www.nd.gov/vr/>.

Contact the Vendor Registry Help Desk for more information, at 701-328-2683 or [spovendor@nd.gov](mailto:spovendor@nd.gov).